IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 133 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

RAGHABHAI BALABHAI BHILL

Appearance:

1. Criminal Appeal No. 133 of 1986

MR KC SHAH APP for appellant

MR SUNIL MEHTA FOR MR SK BUKHARI for Respondent

CORAM : MR.JUSTICE A.M.KAPADIA
and
MR.JUSTICE H.H.MEHTA

Date of decision: 31/01/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.M.KAPADIA)

1. By means of filing this appeal under Section 378 of the Code of Criminal Procedure ('the Code' for short), appellant/State of Gujarat has called in question a judgment and order dated November 7, 1985 rendered by learned Additional Sessions Judge, Vadodara in Sessions Case No. 83 of 1985 acquitting respondent/accused of the offence punishable under Section 302 of the Indian Penal Code ('IPC' for short).

2. Charge against the respondent was that on 14.3.1985 at 4 O' clock in the early morning in his residential house at village Pala he caused murder of his wife by setting her on fire and thereby committed offence punishable under section 302 of the IPC.

3. The basic facts which are required to be discussed for disposal of this appeal are:

(i) That the respondent/accused was having two sons, namely, Arjun and Rajesh and two daughters, namely, Jena and Narmada. His elder son - Arjun had married Bai Jeevi who was elder in age than his son. As per the prosecution case, the respondent was keeping illicit relation with her. It was also alleged by the prosecution that prior to one year of the incident, his son - Arjun gave divorce to his wife - Jeevi. The respondent/accused was suspecting that on the persuasion of his wife - Sona the divorce took place and, therefore, he had frequently quarrelled with her. According to the prosecution case, on the fateful night, between March 13, 1985 and March 14, 1985, after taking meals, the respondent with his wife Sona and two daughters Jena and Narmada, slept inside their house whereas his two sons, Arjun and Rajesh, slept outside the room. At about 4 O'clock in the morning, Jena shouted that there was a fire in the house. Hearing her shouts, Arjun woke up and saw his mother burning. At that time the respondent was not in his house. On hearing shouts raised by Arjun, neighbours assembled there and they extinguished the fire. However, Sona died on the spot of the incidence. The prosecution case was that the respondent after pouring kerosene on his wife set her on fire, left the house and thereby committed murder of his wife.

(ii) The aforesaid incident was reported by Arjun son of the respondent to Shankerbhai, Police Patel and thereafter complaint was filed at Nasvadi Police Station. The said complaint was registered and investigation was put into motion. PSI visited the scene of the offence

and prepared panchnama of the place of incidence. He recovered a tin of kerosene, small bottle, hairs and petty coat of the deceased. Inquest panchnama of the dead body of Sona was drawn. Thereafter her dead body was sent to Civil Hospital, Nasvadi for autopsy. He also recorded statement of Jena, Narmada, Balabhai and Jeevi and thereafter searched for the respondent/accused who was not available.

(iii) According to the prosecution, the respondent/accused appeared before Nasvadi Police Station on March 19, 1985 where he was arrested. Autopsy report was received wherein cause of death of the deceased was shown as burn injuries and as the evidence collected divulged the culpability of the respondent/accused, he was charge-sheeted for commission of the offence of murder of his wife, punishable under Section 302 of the IPC, in the court of Judicial Magistrate, First Class, Sankheda. The learned Magistrate committed the case to Sessions Court, Vadodara.

(iv) On committal, the learned Additional Sessions Judge, Vadodara framed charge at Ex.I against the respondent/accused for commission of the offence punishable under Section 302 of the IPC which was read over and explained to him to which he pleaded not guilty and claimed to be tried. Thereupon the accused was tried by the learned Additional Sessions Judge, Vadodara, in Sessions Case No.83 of 1985.

(v) In order to bring home the culpability of the respondent/accused on the basis of the circumstantial evidence, prosecution has examined in all 9 witnesses and also placed reliance on several documents. After recording of evidence of prosecution witnesses was over, the learned Additional Sessions Judge has explained to the respondent/accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement as required under section 313 of the Code. In his further statement also the respondent denied the case of prosecution in toto but did not lead any evidence in support of his defence.

(vi) On appreciation and evaluation of the evidence adduced by the prosecution, the learned Judge held that the prosecution has failed to bring home the charge levelled against the respondent/accused beyond doubt. Therefore, benefit of doubt was given to him and accordingly he was acquitted of the offence with which he was charged, vide impugned judgment and order which is now on the anvil of scrutiny before us in this appeal

which is filed by the appellant - State of Gujarat.

4. Mr. K.C. Shah, learned APP, has contended that the judgment and order acquitting the respondent/accused is bad in law as not based on proper appreciation of evidence adduced by prosecution witnesses. According to him, the learned trial judge has misread the evidence. He contended that totality of the evidence unerringly leads to the conclusion that there was a motive on the part of the respondent/accused to commit the crime as he was having illicit relation with his daughter-in-law who has been divorced by his son at the instance of his wife Sona and, therefore, the respondent/accused was minded to kill her as she came in his way of having illicit relation with his daughter-in-law. Besides this, the conduct of the respondent/accused was very unnatural. He was not traceable for a period of four to five days as he fled from the scene of the occurrence after murdering his wife by setting her on fire. These two circumstances unerringly established that the murder of his wife Sona was committed by him only. According to Mr. Shah, learned APP, the prosecution has thus established all the links of the chain of circumstantial evidence to connect the respondent/accused with commission of the offence and, therefore, the judgment and order of acquittal recorded by the trial court is vulnerable and as it is not based on the sound principles of circumstantial evidence, it deserves to be quashed and set aside by recording conviction and the respondent/accused may be sentenced in accordance with law.

5. In answer to this, Mr. Sunil Mehta, learned advocate for the respondent/accused has supported the judgment and order of acquittal recorded by the trial Court throughout. According to him, there is no evidence worth the name to consider as all links of circumstantial evidence are missing. He has also asserted that the alleged motive is not established by the prosecution and even if it is established it can hardly be relevant for coming to the conclusion that the respondent/accused has committed murder of his wife. It is also emphasized by him that the respondent/accused was not found or not traceable for four to five days is hardly a circumstance which would connect the respondent/accused with the aforesaid crime. He, therefore, submitted that the learned trial Judge has rightly came to the conclusion that chain of circumstantial evidence is not complete and the links of circumstantial evidence which would connect the respondent/accused with the crime are missing and, therefore, the learned Judge has rightly recorded the order of acquittal which does not warrant interference of

this court in view of the settled principles of law in the case of acquittal appeal. He, therefore, urged that the appeal may be dismissed as it lacks merit.

6. We have considered the submissions advanced by the learned advocates appearing for the parties. We have also perused the memo of appeal, grounds set out therein, the impugned judgment and order recorded by the learned trial Judge acquitting the respondent/accused, the set of evidence and the record and proceedings of Sessions Case No.83 of 1985 which have been called for by this Court while admitting the appeal.

7. There is no manner of doubt that in this case there is no eye witness. Therefore the entire case is based upon circumstantial evidence. It is settled principle of law that in order to sustain conviction on the basis of circumstantial evidence, prosecution must fulfil three conditions:

"(i) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;

(ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused. Further in cases depending largely upon circumstantial evidence there is always a danger that the conjecture or suspicion may take the place of legal proof and such suspicion however so strong cannot be allowed to take the place of proof. The Court has to be watchful and ensure that conjectures and suspicions do not take the place of legal proof. The Court must satisfy itself that the various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused."

The above principles are laid down by the Supreme Court in the case of Jaharlal Das v. State of Orissa, AIR 1991

SC 1388.

8. It is also one of the settled principles of law that witnesses may tell lie but not circumstances. The Court must adopt cautious approach for basing conviction on circumstantial evidence. The Supreme Court has reiterated it in the case of State of Haryana v. Ved Prakash, AIR 1994 SC 468.

9. The Supreme Court in the case of Ramkumar Madhusudan Pathak v. State of Gujarat, (1998) 7 SCC 702 has aptly and elaborately laid down the principles as to which are the circumstances establishing guilt of the accused.

10. The Supreme Court in the very well known case of Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622 has laid down following five principles to base conviction on the circumstantial evidence :

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' be established and not 'may be';

(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) the circumstances should be of a conclusive nature and tendency;

(iv) they should exclude every possible hypothesis except the one to be proved, and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

11. In the latest decision of the Supreme Court in the case of Jaipal v. State of Haryana, (2003) 1 SCC 169 S.C. has held that merely because the accused could have had a motive for causing death of the deceased it would not by itself be enough to sustain the finding of guilt against him.

12. Keeping in forefront the aforesaid principles clearly elucidated by the Supreme Court, we may now advert to the evidence adduced by the prosecution to find out whether the prosecution has successfully established the chain of evidence to base conviction on circumstantial evidence adduced by it.

13. The two circumstances which the prosecution has pitted against the respondent/accused are that:

(i) He had an illicit relation with his daughter-in-law, Bai Jeevi, who was subsequently divorced by his son Arjun at the instance of his wife - deceased Sona. Therefore he was frequently quarreling with his wife - Sona which has given him cause to kill his wife.

(ii) On fateful night he had slept with his wife and two daughters in his house in a room and his two sons were sleeping outside the room. When Arjun woke up on hearing the shouts of Jena and saw his mother burning, the respondent/accused was not found in the house and was not traceable for a period of 4 to 5 days.

14. So far as the first circumstance which was alleged against the respondent/accused by the prosecution is concerned, practically there is no evidence except the bald assertion made in the prosecution case. None of the prosecution witnesses stated that the respondent/accused had an illicit relation with his daughter-in-law, Bai Jeevi and he was frequently quarrelling with his wife and at the persuasion of his wife, Arjun had divorced her and as a result of this the respondent/accused was frequently quarrelling with his wife. On the contrary, the evidence is otherwise. Both the child witnesses have ruled out the theory put forth by the prosecution of frequent quarrels the respondent/accused had with his wife Sona. Therefore, the only circumstance which the prosecution pitted against the respondent was that he was not found or was not traceable for a period of four to five days after the incident though on the fateful night he had slept with his wife and two daughters in a room where the incident had occurred while his two sons were sleeping outside the room. It has come in the evidence that on seeing the fire at about 4 A.M. Jena raised shouts and hearing shouts of Jena, Arjun woke up and seeing his mother on fire he raised shouts. At that time the respondent/accused was not in the house. According to us, this can hardly be a circumstance which would connect the respondent/accused with the crime.

15. On overall appreciation of the evidence, we are

of the view that there is not even a single circumstance available on the entire length and width of the prosecution evidence to connect the respondent/accused with the offence with which he was charged except the one referred to above which, according to us, is hardly a circumstance to connect the respondent/accused with the alleged offence of murder of his wife.

16. Seen in the above context, we are of the opinion that the learned trial Judge has rightly appreciated the evidence and reached to the just and correct conclusion which does not warrant interference of this court in an acquittal appeal filed by the appellant/State of Gujarat when we are in full agreement with the reasoning given by the learned trial Judge.

17. Moreover, this is an acquittal appeal in which the court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of the learned Judge who had the opportunity to observe demeanour of the witnesses. As we are in general agreement with the view expressed by the learned Judge, we do not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the trial Court. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondent/accused. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondent/accused and the learned APP has failed to dislodge the reasons given by the learned Judge in order to convince us to take the view contrary to the one already taken by the learned Judge. Therefore, the acquittal appeal deserves to be dismissed.

18. In the result, the appeal filed by the State lacks merit and deserves to be dismissed and accordingly it is dismissed. Since, the respondent/accused is on bail, his bail bonds shall stand cancelled and sureties are discharged.

(A.M. Kapadia, J.)

(H.H. Mehta, J.)

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